**Call-Off Schedule 23 (Health Additional Call-Off Terms)**

1. **Definitions**
   1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **“Buyer Software”** | means any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables; |
| **“Malicious Software”** | any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence; |
| **“Medical Devices”** | means any Deliverable that falls under the definition of a Medical Device in accordance with guidance published by the Medicines and Healthcare Products Regulatory Agency; |
| **“Open Source Software”** | means computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge; |
| **“Source Code”** | means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software; |
| **“Specially Written Software”** | any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Subcontractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR; and |
| **“Third Party Body”** | has the meaning given to it in paragraph 6.1. |

1. Additional Warranties
   1. The Supplier represents and undertakes to the Buyer that all Deliverables will meet the Buyer’s acceptance criteria, as defined in each Statement of Work.
   2. The Supplier undertakes to maintain all interface and interoperability between Third Party Software or services and Specially Written Software as required for the performance of the Services or delivery of any Deliverables.
   3. The Supplier undertakes and warrants that it has or shall procure all consents, registrations, approvals, licences and permissions relating to Medical Devices as recommended or stipulated by any materials published by the Medicines and Healthcare Products Regulatory Agency.
2. **Additional Intellectual Property Terms**
   1. The Supplier grants to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, assign, sub-license, adapt, commercially exploit or otherwise deal with any of the Supplier’s Existing IPR and any Third Party IPR to the extent necessary to enable the Buyer to obtain the full benefits of ownership of any New IPRs. The Supplier shall procure that such licence shall permit subsequent sub-licensees to sub-license the Existing IPR and Third Party IPR on the same terms and subject to the same restrictions as under this paragraph to enable each further subsequent sub-licensee to obtain the full benefits of any New IPRs that are sub-licensed to them.
   2. In respect of all Government Data, the Authority shall be the owner of all such Government Data and any Existing IPR and New IPR in such Government Data and any modifications, updates and amendments in relation to the same. The Supplier may not assign, license or otherwise deal with any Government Data or IPRs in such Government Data without the Authority’s specific written consent.
   3. The Supplier may only use its Existing IPR or any Third Party IPR in any New IPR if the Buyer has given its written consent in advance.
   4. The Supplier may only use Open Source Software in any New IPR if the Buyer has given its written consent in advance.
   5. The Supplier shall ensure that all New IPR, Existing IPR and Third Party IPR licensed or assigned to the Buyer is able to be assigned, novated or otherwise transferred to:
      1. any other Central Government Body, NHS England, NHS Improvement, DHSC or any other Crown Body or any public or private sector body which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer; or
      2. any other public or private body.
   6. Unless otherwise agreed by the Parties in writing, the Supplier shall ensure that all computer program elements of New IPR shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which is suitable for publication by the Buyer as Open Source and based on Open Standards (where applicable), and the Buyer may, at its sole discretion, publish the same as Open Source.
3. Document and Source Code Management Repository
   1. The Parties shall work together to ensure that there is appropriate IPR asset management. Where the Supplier is working on the Buyer’s system the Supplier shall comply with the Buyer’s IPR asset management approach and procedures. Where the Supplier is working on the Supplier’s system it will ensure that it maintains its IPR asset management procedures in accordance with Good Industry Practice. Records and documentation associated with IPR asset management shall form part of the Deliverables associated with any Specially Written Software or New IPR.
   2. The Supplier shall comply with any reasonable instructions given by the Buyer as to where it will store Documentation and Source Code, both finished and in progress, during the term of this Call-Off Contract, and at what frequency/intervals.
   3. The Supplier shall ensure that all items that are uploaded to any repository contain sufficient detail, code annotations and instructions so that a third-party developer with the relevant technical abilities within the applicable role would be able to understand how the item was created and how it works together with the other items in the repository within a reasonable timeframe.
   4. The Supplier shall maintain a register of all Open Source Software used in the provision of the Deliverables in accordance with its IPR asset management obligations under this Contract.
   5. The Supplier shall provide the Buyer with a copy of the IPR asset management information relating to the Deliverables on request by the Buyer, in a standard portable machine readable format.
4. Escrow
   1. The Supplier shall on request from the Buyer within 20 Working Days after the Start Date, deposit the Source Code of software that is the Supplier’s Existing IPR or Third Party IPR in escrow with the National Computing Centre on their standard terms.
   2. The Supplier shall ensure that the deposited version of the Source Code is the current version of the Software and that the deposited version is kept up to date as the Software is modified or upgraded. The Buyer shall pay the deposit and maintenance fees under the escrow agreement and the Supplier shall pay the release fees under the escrow agreement.
   3. Where the Supplier is unable to procure compliance with the provisions of paragraph 5.1 in respect of any Third Party IPR, it shall provide the Buyer with written evidence of its inability to comply with these provisions and shall agree with the Buyer a suitable alternative to escrow that affords the Customer the nearest equivalent protection. The Supplier shall be excused from its obligations under paragraph 5.1 only to the extent that the parties have agreed on a suitable alternative.
   4. In circumstances where the Buyer obtains the release of the Source Code from escrow, the Supplier hereby grants to the Buyer (on behalf of itself and the Replacement Supplier) a perpetual, assignable, royalty-free and non-exclusive licence to use, support, modify and enhance the Source Code version of the software to the extent necessary for the receipt of the Deliverables or any replacement services.
5. Information Sharing By the Buyer
   1. The Supplier shall, if requested by the Buyer, provide such management information as is provided under Call-Off Schedule 15A (Health Supplier and Contract Management) to another Buyer or to any Central Government Body, whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) (**“Third Party Body”**). The Supplier confirms and agrees that the Buyer may itself provide the Third Party Body with management information relating to the Deliverables, any payments made under this Contract, and any other information relevant to the operation of this Contract.
   2. Upon receipt of management information supplied by the Supplier to the Buyer and/or the Third Party Body, or by the Buyer to the Third Party Body, the Parties hereby consent to the Third Party Body and the Buyer:
      1. storing and analysing the management information and producing statistics; and
      2. sharing the management information or any statistics produced using the management information with any other Buyer or Central Government Body.
   3. If the Third Party Body and/or the Buyer shares the management information or any other information provided under paragraph 6.2, any Buyer or Central Government Body receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Buyer to such other Buyer or Central Government Body, be informed of the confidential nature of that information by the Buyer and shall be requested by the Buyer not to disclose it to any body that is not a Buyer or Central Government Body (unless required to do so by Law).
   4. Without limitation, the following additional information may be shared by the Buyer with Third Party Bodies subject to the terms of this Paragraph 6:
      1. the Buyer’s requirements;
      2. the Supplier’s rate card and summary cost information;
      3. the Buyer’s spend information; and
      4. the Supplier’s registration information on the procurement platform used by the Buyer for the purposes of this Call-Off Contract.
6. Malicious Software
   1. The Supplier shall, throughout the Call-Off Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
   2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.
   3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of paragraph 7.2 shall be borne by the Parties as follows:
      1. by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and
      2. by the Buyer, if the Malicious Software originates from the Buyer Software or the Government Data (whilst the Government Data was under the control of the Buyer).
7. **Data Protection Impact Assessment Delivery and Assistance**
   1. Without limitation to the obligations as set out in Joint Schedule 11 (Processing Data) and the Order Form, the Supplier shall provide a draft DPIA prior to Contract Award for each Deliverable under the Contract.
   2. The Supplier shall update the DPIA to be complete for the agreed Deliverables and meeting all Law, prior to the Start Date of the Contract. The Supplier shall be responsible for updating the DPIA at each material change of the Deliverables (including but not limited to each release of new software) and following any Variation.
8. Third Party Rights for a Public Sector Data Processing
   1. Further to Clause 19, where in Joint Schedule 11 (Processing Data) there is a third-party public sector Controller listed, the named third party public sector Controller will have CRTPA rights in relation to Data Protection Legislation obligations, where the Buyer has indicated this should be the case in the Order Form.
   2. Where the third party public sector Controller wishes to exercise its rights pursuant to paragraph 9.1, the Buyer shall notify the Supplier that the rights are to be exercised.
   3. The enforcement rights granted by Clause 9.1 are subject to the following restrictions and qualifications:
      1. the Parties may vary, terminate or rescind the Call-Off Contract without the consent of any third party; and
      2. the Buyer may, as agent or trustee, enforce any term of the Call-Off Contract on behalf of another such relevant third party to whom rights have been granted.
9. Data Protection Indemnity
   1. The Supplier recognises that the Buyer (where controller) will have obligations to meet in Law in relation to any breach and communication to subjects and the ICO, as well as government obligations as to conduct and transparency. Clause 26.2 to 26.5 inclusive of the Core Terms shall not apply in relation to any confidentiality or data protection indemnity provided by the Supplier including but not limited to Clause 14.8(e) of the Core Terms.
10. Confidentiality
    1. It is recognised that the Health public sector is subject to National Health Service Act 2006 section 9, and in accordance with that statute does not put in place binding legal contracts.
    2. In relation to Clause 15.5 of the Core Terms, the Buyer shall only be required to notify any public sector recipient that any confidential information is classed as confidential.
11. Premises
    1. Where either Party uses the other Party’s premises, such Party is liable for all Losses arising from any damage it causes to the premises. Such Party is responsible for repairing any damage to the premises or any objects on the premises, other than fair wear and tear.
    2. The Supplier will use the Buyer Premises solely for the Call-Off Contract.
    3. This clause does not create a tenancy or exclusive right of occupation.
    4. While on the Buyer Premises, the Supplier will:
       1. ensure the security of the premises;
       2. comply with Buyer requirements for the conduct of personnel;
       3. comply with any health and safety measures implemented by the Buyer;
       4. comply with any instructions from the Buyer on any necessary associated safety measures ; and
       5. notify the Buyer immediately in the event of any incident occurring on the premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
    5. The Supplier will ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Buyer on request.
    6. All Supplier Equipment brought onto the Buyer Premises will be at the Supplier's risk. Upon termination or expiry of the Call-Off Contract, the Supplier will remove such Supplier Equipment.
12. Audit
    1. The Buyer may Audit the Supplier at any time by giving notice in writing, such notice to set out details of the scope of such Audit and the details of the relevant Auditor.
    2. Further to Clause 6.6, the Supplier must provide a copy of its Self Audit Certificate supported by an audit report to the Buyer at the end of each Contract Year.
13. Non-Solicitation of Employees or Contractors
    1. The Supplier recognises that the Buyer invests a considerable amount of time, cost and effort in the recruitment and training of staff in the niche area of ICT health services in the public sector. Furthermore, the necessary recruitment governance activity and security checks result in a long lead time in onboarding new staff. Consequently, the Buyer has a legitimate business interest to prevent the unauthorised solicitation or employment or engagement of Restricted Staff.
    2. In order to protect the legitimate business interests of the Buyer (and in particular the Confidential Information, goodwill and the stable trained workforce of each Party), the Supplier agrees that it shall not for the duration of the Call-Off Contract and for a period of 3 months after termination or expiry of this Call-Off Contract solicit or entice away from the employment or service or engagement of the Buyer any Restricted Staff, other than by means of a national advertising campaign open to all-comers and not specifically targeted at the Restricted Staff. The Supplier shall not be deemed to be in breach of this paragraph 14 where Restricted Staff are engaged in response to applying to a general advertising campaign.
14. Further consequences of Call-Off Contract Expiry or Termination
    1. In addition to the provisions of Clause 10.5, at the end of the Call-Off Contract (howsoever arising), the Supplier must:
       1. immediately return to the Buyer:
          1. all copies of Buyer Software and any other software licensed by the Buyer to the Supplier under this Call-Off Contract;
          2. any materials created by the Supplier under this Call-Off Contract or work in progress where the IPRs are or will be owned by the Buyer; and
          3. all Buyer Assets provided to the Supplier by the Buyer in good working order.
       2. immediately upload any items that are or were due to be uploaded to the repository in accordance with paragraph 4 of this Schedule when this Call-Off Contract was terminated;
       3. ensure that any Government Data returned under Clause 10.6.1(d) is, at the direction of the Buyer, provided to the Buyer and any Replacement Supplier with a complete and uncorrupted version of the Government Data in electronic form in the formats and on media agreed with the Buyer and any Replacement Supplier;
       4. work with the Buyer on any work in progress and ensure an orderly transition of the Services to the Replacement Supplier;
       5. provide all information requested by the Buyer on the provision of the Services so that:
          1. the Buyer is able to understand how the Services have been provided; and
          2. the Buyer and any Replacement Supplier can conduct due diligence.
    2. Each Party will return all of the other Party’s Confidential Information. Each Party will confirm that it does not retain the other Party’s Confidential Information except where the information must be retained by the Party as a legal requirement or where this Call-Off Contract states otherwise.